

IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF GEORGIA  
ATHENS DIVISION

KITTY SMITH,	:	
	:	
Petitioner,	:	
	:	No. 3:06-CR-33 (CAR)
v.	:	No. 3:12-CV-90131 (CAR)
	:	
UNITED STATES OF AMERICA,	:	Proceeding under 28 U.S.C. § 2255
	:	
Respondent.	:	
_____	:	

**ORDER ON THE REPORT AND RECOMMENDATION**  
**OF THE UNITED STATES MAGISTRATE JUDGE**

Before the Court is the Recommendation of the United States Magistrate Judge [Doc. 229] to dismiss Petitioner Kitty Smith’s Motion to Vacate, Set Aside, or Correct her Sentence pursuant to 28 U.S.C. § 2255 [Doc. 222] as untimely. Petitioner, proceeding *pro se*, has filed an Objection [Doc. 230] to the Recommendation. After thoroughly considering the merits of Plaintiff’s objections, the Court finds them to be without merit and agrees with the findings and conclusions of the United States Magistrate Judge that because Petitioner failed to file her Section 2255 petition within the one-year period of limitations and because she has failed to show that she is entitled to equitable tolling or that she is actually innocent of the crimes for which she was convicted, the petition must be dismissed as untimely. Thus, the Magistrate Judge’s Recommendation [Doc. 229] is **ADOPTED** and **MADE THE ORDER OF THE**

**COURT**, and Petitioner's Motion to Vacate, Set Aside, or Correct her Sentence pursuant to 28 U.S.C. § 2255 [Doc. 222] is **DISMISSED** as untimely.

Additionally, because Petitioner has failed to make a substantial showing of the denial of a constitutional right, a certificate of appealability is **DENIED**.

**SO ORDERED**, this 23rd day of April, 2013.

S/ C. Ashley Royal  
C. ASHLEY ROYAL  
UNITED STATES DISTRICT JUDGE

SSH